

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 04-10294-DPW, 04-10359-DPW

DEBORAH CHIN, ET AL.

VS.

SONUS NETWORKS, INC., ET AL.

HEARING
BEFORE THE HONORABLE DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
Date: June 1, 2005

APPEARANCES:

Jeff Rudman, Esq., and Daniel Halston, Esq., Daniel H.
Gold, Esq., (WILMER, CUTLER, PICKERING, HALE and DORR LLP);
on behalf of Sonus Networks, Inc., Edward Anderson, Paul
Ferri, Albert Notini, Paul Severino.

Solomon B. Cera, Esq., (GOLD, BENNETT, CERA & SIDENER), 595
Market Street, Suite 2300, San Francisco, CA 94105; on
behalf of the Lead Plaintiff in 04-10294, B/I Global Asset
Management.

John R. Baraniak, Jr., Esq., (CHOATE HALL & STEWART),
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John C. Martland, Esq., (GILMAN AND PASTOR, LLP), 60 State Street, 37th Floor, Boston, MA 02109; on behalf of the plaintiff, derivative action.

John D. Hughes, Esq., (EDWARDS & ANGELL LLP), 101 Federal Street, Boston, MA 02110; on behalf of defendants, Rubin Gruber, Michael O'Hara, Paul Jones, and Edward Harris.

Matthew J. Matule, Esq., and Michael S. Hines, Esq., (SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP) One Beacon Street, Boston, MA 02108-3194; on behalf of defendant, Stephen J. Nill.

1 P-R-O-C-E-E-D-I-N-G-S

2 THE CLERK: Calling In Re: Sonus Network
3 Shareholder derivative litigation and In re: Sonus
4 securities litigation, Civil Action Number 04-10359 and
5 04-10294.

6 THE COURT: I did want to take up the derivative
7 action first. I shouldn't ask the broadest question first
8 but I will. Why wouldn't a demand be made?

9 MR. JONCKHEER: Your Honor, William Jonckheer for
10 the plaintiff.

11 Your Honor, demand was not made because based on
12 assessment of the facts in the case, the determination was
13 made that demand would be futile, and that's based on the
14 allegations that are in the complaint which --

15 THE COURT: That's not the answer I want to
16 discuss with you. If it's futile, what's wrong with making
17 demand, except that you get the opportunity to hear the
18 motion to dismiss. I just don't understand why someone
19 wouldn't make a demand under these circumstances.

20 MR. JONCKHEER: I believe, Your Honor, if a demand
21 is made, and typically, a demand would be rejected.

22 THE COURT: Right.

23 MR. JONCKHEER: Then the standard in order to
24 enforce the company's claims by a shareholder, the standard
25 becomes much more difficult to overcome the demand to reject

1 it.

2 THE COURT: I guess I need some education
3 regarding this.

4 MR. JONCKHEER: I believe the standard that
5 applies to a demand refused case, is much higher than the
6 standard that applies to a demand execution case.

7 THE COURT: Ask the question for purposes of
8 education.

9 MR. JONCKHEER: I believe under the -- if a demand
10 is made --

11 THE COURT: Two different answers.

12 MR. JONCKHEER: If a demand is made and rejected,
13 I believe that under the operative standards, the rejection
14 is protected, the business judgment rule to a higher extent
15 which is a higher standard to meet or defeat for derivative
16 plaintiff, that believes that the company claims should be
17 enforced. Whereas in a demand, if you are alleging demand
18 of futility, then other standards apply where the plaintiff
19 needs to allege a claim of bad faith in effect. In order to
20 invalidate the application of the business judgment rule by
21 the board to the claims at issue.

22 THE COURT: Strikes me a kind of game of chicken
23 to be playing under these circumstances. In particular,
24 after the state court judges effectively said that it wasn't
25 futile.

1 MR. JONCKHEER: The point I would make with
2 respect to the State Court opinion, I think you are looking
3 at complaints that are really very different. It's a night
4 and day difference in fact.

5 THE COURT: What is the night and day difference?
6 Frankly, I assume the difference between 3:40 and 3:43 in
7 the afternoon. What is the night and day difference?

8 MR. JONCKHEER: The difference, Your Honor, is
9 that the state complaint was filed on February 20th, 2004.

10 THE COURT: When was the first filed.

11 MR. JONCKHEER: I believe around the same time,
12 later in February.

13 THE COURT: That is the difference?

14 MR. JONCKHEER: Well, the point is that under the
15 arrangement that we made before Your Honor in terms of
16 filing the amended complaint, we did that, we filed it in
17 October, and in the amended complaint are an enormous amount
18 of details regarding what actually went wrong at this
19 company. So whereas the state complaint --

20 THE COURT: You mean Judge van Gestel didn't know
21 something went wrong with the company.

22 MR. JONCKHEER: He didn't know the extent of the
23 problems with the internal controls of the company.

24 THE COURT: What has to -- to do with the futility
25 of the case.

1 MR. JONCKHEER: Because the camera case, Your
2 Honor, where a Board of Directors is responsible for
3 operating, instituting a system of internal controls, when
4 the Board utterly fails to do that, that is a showing, that
5 can demonstrate a showing of bad faith, which is sufficient
6 to demonstrate interested for demand of futility.

7 THE COURT: What the information -- wasn't that
8 information available at the time the Judge van Gestel
9 rendered his opinion?

10 MR. JONCKHEER: It was not, Your Honor.

11 THE COURT: It wasn't?

12 MR. JONCKHEER: No. Because the restatement did
13 not occur. It was not revealed until July.

14 THE COURT: And when did Judge van Gestel render
15 his decision?

16 MR. JONCKHEER: I believe he rendered in
17 September.

18 THE COURT: Isn't that the operative date?

19 MR. JONCKHEER: No because in his order, he
20 specifically says that he is ruling on the complaint as
21 written and as filed on February 20th.

22 THE COURT: But he is ruling as to the date.
23 Again, that is what I am looking to for purposes of
24 collateral estoppel evaluation. The judgment that I am
25 observing and obligated to observe is the one -- is as of

1 the date the judgment enters.

2 Now, if people didn't take steps to protect
3 themselves, if they didn't bring matters to the attention of
4 Judge van Gestel, if they didn't choose to amend their
5 complaint, that is a different issue.

6 MR. JONCKHEER: He didn't give leave to amend.

7 THE COURT: It was sought?

8 MR. JONCKHEER: I don't know that, Your Honor, but
9 I assume it was.

10 THE COURT: What do you mean you assume it was?
11 Isn't that relevant to evaluation here?

12 MR. JONCKHEER: I think the point is, that some
13 later information was submitted to Judge van Gestel
14 according to the defendant's papers.

15 THE COURT: If you are going to oppose it, didn't
16 you inquire?

17 MR. JONCKHEER: Did I inquire what, Your Honor?

18 THE COURT: Inquire whether or not this
19 information was submitted, not submitted, whether or not
20 leave to amend was permitted, not permitted?

21 MR. JONCKHEER: I know some was, that some
22 additional information was submitted but from the collateral
23 estoppel purposes, Your Honor, I believe that the Court
24 should look at what the order says and what the issues are
25 that the court ruled upon. The Court rejected any amendment

1 to the complaint and also rejected --

2 THE COURT: You said "rejected any amendment to
3 the complaint"?

4 MR. JONCKHEER: Yes. The Court denied leave to
5 amend; that is in the order.

6 THE COURT: He denied leave to amend?

7 MR. JONCKHEER: That's right. The complaint was
8 never amended in this state case.

9 THE COURT: That it was never amended is different
10 from denying leave to amend.

11 MR. JONCKHEER: Well, the order says -- I can
12 infer, Your Honor, from what the judge said about leave to
13 amend, that it was requested. The Court accepts Supreme
14 Court reasoning, such dismissal ought to be without leave.

15 THE COURT: Hold on for a second.

16 Okay. What page are you pointing to?

17 MR. JONCKHEER: It's Page 9 of Judge van Gestel's
18 order.

19 (Pause.)

20 THE COURT: Some policies supports the -- is that
21 what you are saying?

22 MR. JONCKHEER: I am sorry, Your Honor.

23 THE COURT: I got Page 9 in front of me.

24 MR. JONCKHEER: Yes.

25 THE COURT: And what is the specific thing that

1 you want me to look at?

2 MR. JONCKHEER: Well, I am pointing to the -- I am
3 pointing to that sentence and --

4 THE COURT: Wait. Let me see. Maybe the
5 defendants can answer it. Was there a request for leave to
6 amend?

7 MR. HALSTON: There was not, no motion was ever
8 filed what the plaintiffs in the state court case. In
9 footnote 6 of their brief, was to say we've not sued
10 Thompson, the other Board member, outside the director was
11 not named as a defendant, either in the State Court action
12 or the Federal Court action, and they added a sentence,
13 footnote 6 to say to the extent you want us to add him, we
14 ask leave to add Thompson at some later date. And that's
15 all, what was ever presented with respect to any request for
16 amendment, Your Honor.

17 THE COURT: Do you have any basis to disagree with
18 that?

19 MR. JONCKHEER: Well, from what I understand, Your
20 Honor, reading under --

21 THE COURT: From which you understand. You know,
22 do you have any facts to bring to my attention apart from
23 this argument from exercise of pure reason?

24 MR. MARTLAND: I am sorry, Your Honor.

25 THE COURT: Do you have anything to bring to my

1 attention that is specific, or you just going to wing it?

2 MR. JONCKHEER: Your Honor, I believe that Judge
3 van Gestel concluded that he would not give leave to --

4 THE COURT: Now --

5 MR. MARTLAND: Under the Delaware Supreme Court.

6 THE COURT: The plaintiffs in the state court, I
7 am told, maybe you know differently but apparently you don't
8 know at all the plaintiffs in the state case apparently did
9 not move to amend.

10 MR. JONCKHEER: They did not move to amend, that's
11 right.

12 THE COURT: How do we know what Judge van Gestel
13 is going to do or would have done had they?

14 MR. JONCKHEER: We don't, Your Honor, except that
15 in typical -- maybe this is the problem that I am having
16 understanding, that the -- typically when the complaint is
17 dismissed on the first motion to dismiss, leave to amend
18 would follow. That apparently is not what Judge van Gestel
19 concluded here.

20 THE COURT: Typically? People have, I think, a
21 rather unusual view, something that maybe I ought to
22 precurse for purposes of the securities action, the class
23 action. The idea that this is some sort of interactive
24 process, that the Court gets to mark up the complaint, and
25 then the plaintiffs get to file another one. First question

1 I am going to ask the class plaintiffs is: Is this your
2 final complaint? Because if it isn't, they better file
3 their final complaint before I act on their motion to
4 dismiss. You apparently are laboring under a similar
5 apprehension. That there is one free shot. That you don't
6 have to amend your complaint, and that they didn't have to
7 amend their complaint in the state court. That simply is
8 not the case. And so I want to disabuse you of that. You
9 told me that Judge van Gestel wouldn't let them amend their
10 complaint. Apparently, they never asked to.

11 MR. JONCKHEER: Well, it appears he did ask with
12 respect to that particular party.

13 THE COURT: That's not dropping something in a
14 footnote, like say foot note 25.

15 MR. JONCKHEER: Motion to amend, correct, that I
16 can see. That -- that appears to be the case.

17 THE COURT: There is no motion to amend, and isn't
18 the issue then for us whether or not there was adequate
19 representation of the shareholders for purposes of the
20 derivative action?

21 MR. JONCKHEER: Well, I would submit, Your Honor,
22 that under the collateral estoppel analysis, okay, in the
23 First Circuit, has said following regarding collateral
24 estoppel. -- issues transferred by significant changes, and
25 that is in the DeCosta case cited by the defendants.

1 THE COURT: That is a class case. Really, I guess
2 we have to deal with it in two parts. First is what was the
3 state of the record, state of bidding actually, at the time
4 that the initial judgement was entered in the State Court.
5 And just a moment. And that is because under State Court
6 23.1, just as under federal 23.1 analysis, there is not --
7 there is an obligation for the state to see representation.
8 It's implicit in its determination, and it's part of the
9 judgment.

10 Okay. So now we say what was the state of the
11 bidding at the time that Judge van Gestel entered his order?
12 And the information that you are pointing me to was all
13 available, apparently not for some reason brought to his
14 attention, formally.

15 MR. JONCKHEER: Well, Your Honor, I would submit
16 that that's the reason that the -- both the collateral
17 estoppel issue, the only thing Judge van Gestel held is that
18 the complaint that he read that was filed on February 20th,
19 did not have the facts. That's the only thing he held.
20 There is no res judicata effect.

21 THE COURT: No, he didn't. He held there was in
22 futility in the failure to make that demand.

23 MR. JONCKHEER: He held there was -- are no facts
24 pled to excuse demand. That is the only thing he held.
25 Underlining substantive claims remain in effect.

1 THE COURT: They may but you have to perfect them
2 in the proper fashion.

3 MR. JONCKHEER: That's right, and that is what we
4 are doing by the complaint filed in this case.

5 THE COURT: No. Now, you are faced with res
6 judicata effect of a determination with respect to that.
7 There is a judgment.

8 MR. JONCKHEER: But the only issue litigated is
9 the demand futility issue, which resulted in a judgment.

10 THE COURT: So what that means is that every time
11 one shareholder group gets booted out, on failure of the --
12 of stating a claim, that another one can rise from the
13 action somewhere else and bring their own lawsuit.

14 MR. JONCKHEER: No because there was no failure to
15 state a claim. There was failure to allege demand for
16 futility. That is different from the underlining claim,
17 which defendants concede remains in effect. The underlining
18 claims are there to be enforced. The question the Judge van
19 Gestel decided is whether the state plaintiff had showed the
20 facts to take those claims and prosecute them. Judge van
21 Gestel read that complaint. He didn't like it. The most
22 recent fact in that complaint regarding the restatement came
23 from February 11th of 2004, which was simply an announcement
24 that the company was looking at 2003 and might have to
25 restate and was doing an investigation.

1 THE COURT: There was no collateral estoppel
2 effect in general cases whenever the facts alleged.

3 MR. JONCKHEER: Your Honor, I believe that is
4 correct.

5 THE COURT: Is there case law that says that?

6 MR. JONCKHEER: No. But the collateral estoppel
7 concept, the issue is clear, and as I just read from the
8 First Circuit opinion -- is a change in the facts that are
9 central.

10 THE COURT: Any change of fact -- any change in
11 the facts?

12 MR. JONCKHEER: Material change here, Your Honor,
13 and they are material.

14 THE COURT: All right. And the materiality is
15 what?

16 MR. JONCKHEER: Materiality is the admissions by
17 the defendants regarding the state of company internal
18 controls. Now, that occurred in July. So what Judge van
19 Gestel looked at was the -- looks like '03 might be restated
20 that is the only thing he knew. What we know here is that
21 2001, 2002, and 2003 were restated. We know by how much,
22 what accounts.

23 THE COURT: It wouldn't make any difference in
24 terms of the factual predicate for which he -- on which he
25 was acting.

1 MR. JONCKHEER: But it makes --

2 THE COURT: It's two parts. The first part is it
3 was available, and it wasn't pressed, and you are bound by
4 the determination of the state plaintiffs with respect to
5 this group of action. So I have to say they chose not to
6 present it. And if I were to say anything else, I would be
7 saying this was an inadequacy representation in the state
8 case.

9 MR. JONCKHEER: Your Honor, they presented a
10 complaint. The defendants moved to dismiss it. The
11 plaintiffs submitted some additional information, and there
12 is no indication that the judge thought about that, that he
13 even cared if additional information was disclosed because
14 in footnote 5 on Page 7 of his order --

15 THE COURT: What is the exception to the
16 collateral estoppel rule, the judge didn't care?

17 MR. JONCKHEER: I am sorry, Your Honor. I
18 misspoke.

19 THE COURT: Go on. Substantiate it.

20 MR. JONCKHEER: The point is the judge was
21 presented with additional information, and I say that within
22 the context of his legal analysis, Your Honor, that he
23 didn't think it was relevant. He concluded that the
24 complaint as written is what is -- whether it's going to be
25 determinative of what a demand is excused. In footnote 5 on

1 Page 7 of his order, he says the complaints were live or die
2 as written when the arguments were presented to the Court.
3 Live or die is written. So the point is that under the
4 Delaware cases that he is relying upon, that indeed is the
5 standard that demand futility is gaged at the time the
6 complain is filed. No additional facts are relevant. That
7 is why.

8 THE COURT: We are back to this question of
9 whether or not there is the right to amend the complaint; is
10 that what you are saying? That he effectively denied the
11 right to amend the complaint?

12 MR. MARTLAND: What I am saying, that it's clear
13 from procedural history there, that the plaintiffs tried to
14 offer some additional information to the Court.

15 THE COURT: What does that mean, tried to offer
16 additional information?

17 How do you do that? You do that by a complaint.

18 MR. MARTLAND: That's right.

19 THE COURT: And they didn't move to amend the
20 complaint.

21 MR. JONCKHEER: They didn't move to amend the
22 complaint, that's correct, Your Honor. But I believe the
23 hearing on the motion to dismiss, and I wasn't a party to
24 that. I don't know, but I believe it occurred right around
25 the same time that the restatement finally came out that the

1 restatement was issued. So I believe that the timing is
2 such that the motion to amend, the motion to dismiss was
3 fully briefed, I believe as of the spring, and hearing
4 occurred I believe in July, but the defendants would have
5 to -- I don't know that, exactly when. It was June
6 apparently. So at that point, when the hearing was held,
7 the restatement hadn't even come out yet, so those facts
8 could not have obviously been disclosed to Judge van Gestel.

9 THE COURT: I don't know why not.

10 MR. JONCKHEER: You mean after the hearing?

11 THE COURT: No one tried to, apparently.

12 MR. JONCKHEER: Well, apparently the plaintiff
13 does not submit it after the hearing.

14 THE COURT: That entitles you to come in and make
15 a lawsuit.

16 MR. JONCKHEER: Not to bring another lawsuit, but
17 to allege facts that support our derivative complaint.

18 THE COURT: Basic legal environment was alleged
19 before Judge van Gestel is nothing in the nature of the
20 legal theories that you've alluded to that wasn't before
21 him. Now, there were factual problems with it, he
22 identified them, but there is nothing that in terms of
23 charges that were developed here that weren't before Judge
24 van Gestel. Just got worse for the company.

25 MR. JONCKHEER: That's right. And those are facts

1 that are before Your Honor.

2 THE COURT: See, it seems to me it's outright
3 refusal to pursue the idea of making a demand, that's
4 purely, and some perception telling me that business
5 judgment was harder to deal with than --

6 MR. JONCKHEER: Your Honor, the policy of the law
7 is that demand is excused under certain circumstances. How.
8 Now, we believe those circumstances exist, so that's why the
9 complaint was filed in the form it was filed.

10 THE COURT: Okay. Well, I guess I need to
11 understand with some particularity exactly what it is in
12 terms of theory, there was before Judge van Gestel.

13 MR. JONCKHEER: The theory, Your Honor, is clear.
14 The Caremark case is an important Delaware case, which in
15 context of proving the settlement of the Court, described
16 the standards of liability for what is called failure of
17 oversight case where the Board does not operate an internal
18 control system in such a fashion that the corporation is
19 harmed as a result of the facts alleged in the complaint
20 that we filed in October, three months after the
21 restatement, alleges 9 separate categories of internal
22 controls that were deficient at this company.

23 THE COURT: Let me understand this. Your
24 position, I shouldn't have let you file this amended
25 complaint?

1 MR. JONCKHEER: No.

2 THE COURT: Something wrong in the Delaware law
3 about filing an amended complaint?

4 MR. JONCKHEER: Well, under Delaware law, that
5 is -- there are cases that suggest that --

6 THE COURT: Are you telling me that's why Judge
7 van Gestel didn't permit.

8 MR. JONCKHEER: That is what the order says, Your
9 Honor.

10 THE COURT: That is not what it says and you know
11 it.

12 MR. JONCKHEER: I am sorry. I understood that
13 Judge van Gestel said that there would be no leave to amend
14 based on the Delaware case.

15 THE COURT: None was asked for. What he is saying
16 at the end of the case, having rendered a judgment, there is
17 not going to be leave to amend. You had a shot at it, or
18 more accurately, your client had a shot at it, more
19 accurately the representative of your client had a shot at
20 it, and they weren't successful.

21 MR. JONCKHEER: I believe under federal procedure,
22 and I have a case by Judge Keeton also cited by the
23 defendants, which specifically says that in the context of a
24 derivative case under 23.1 --

25 THE COURT: 23.1.

1 MR. JONCKHEER: -- which this case is brought
2 under, he is aware of no --

3 THE COURT: 23.1, not 22.

4 MR. JONCKHEER: That's right, 23.1.

5 I am aware of no case law in this circuit that
6 supports on contrary First Circuit dismissal under 23.1 have
7 been without prejudice. So leave to amend is granted, 23.1
8 derivative on the demand futility issue.

9 THE COURT: Let me put the same question to you.
10 Is this your best plan?

11 MR. JONCKHEER: Yes, Your Honor.

12 THE COURT: This is the one you are going to rise
13 and fall on.

14 MR. JONCKHEER: Let me say one thing, since this
15 is an evolving set of disclosures, it took months before the
16 restatement finally came out. Additional information has
17 come out, but I believe the current complaint alleges the
18 Caremark claim sufficiently.

19 THE COURT: I am telling you right now, that I am
20 going to act on the complaint that you tell me that is your
21 best complaint. Is this your best complaint? This is not
22 going to be a game of -- or more accurately, a presentation
23 of shareholders in which a new story is told every evening
24 to foreclose unhappy consequences. There is too much going
25 on in courts to spend time blue pen or highlighting or

1 anything the complaints of those who aren't prepared to
2 stand or fall by their complaint.

3 Are you prepared to stand or fall by your
4 complaint?

5 Because there will be no leave to amend once a
6 judgment is entered here. Do you understand that?

7 MR. JONCKHEER: I understand.

8 THE COURT: Okay. So is this your complaint?

9 MR. JONCKHEER: Your Honor --

10 THE COURT: Is this your complaint?

11 MR. JONCKHEER: Yes. But I believe that there are
12 additional facts that developed since it was filed.

13 THE COURT: You are being afforded the opportunity
14 to make whatever modifications you want in the complaint now
15 before I go through the final process of determining whether
16 or not this complaint is adequate. That is what it means to
17 have freely offered, an opportunity to amend the complaint.
18 It doesn't mean that we spin through this over and over and
19 over again.

20 MR. JONCKHEER: I understand, Your Honor.

21 THE COURT: Is this your complaint?

22 MR. JONCKHEER: If Your Honor's permitting leave
23 to amend, then I would accept that.

24 THE COURT: If I am permitting what?

25 MR. JONCKHEER: Leave to amend the complaint.

1 THE COURT: I am before I act on it. You know
2 what the objections are. You've heard what I have had to
3 say about it. Is this the complaint that you are prepared
4 to rise or fall on?

5 MR. JONCKHEER: Your Honor, I would like leave to
6 amend the complaint. No.

7 THE COURT: When?

8 MR. JONCKHEER: Within a time period that we
9 can -- that the court can establish.

10 THE COURT: What does that mean?

11 MR. JONCKHEER: 30 days.

12 THE COURT: And that will be your final complaint?

13 MR. JONCKHEER: Your Honor, yes.

14 THE COURT: Any objection on the part of the
15 defendants?

16 MR. HALSTON: Certainly prefer to have it
17 dismissed with prejudice at this time, Your Honor.

18 THE COURT: Do doubt.

19 MR. HALSTON: The Coughlin case, on the issue of
20 permissible to dismiss this case with prejudice in the First
21 Circuit, actually at the end of that opinion, the Court in
22 rendering its decision said in noting what the District
23 Court had said about demand futility and whether it would be
24 dismissed with or without prejudice, said the dismissal
25 with -- with prejudice, with the issue, obligation to make

1 demand on the directors with respect to the substantive
2 complaint. And I think in the context of where we are now,
3 Your Honor, they filed an already amended complaint. Recall
4 they filed an original complaint back in February or March
5 last year. Consolidated amended complaint on October 12.
6 It went in having the benefit of Judge van Gestel's decision
7 on December 27th, and in that context, I think the Court
8 should further legitimate policy from the Delaware courts,
9 have said time and time again that directors shouldn't have
10 to be put through the expense of having to continue --

11 THE COURT: Those were procedure issues, aren't
12 they?

13 MR. HALSTON: Actually, the Supreme Court has made
14 clear that in considering demand futile, the demand futile
15 is an issue of substantive law.

16 THE COURT: But the question of whether or not to
17 amend the complaint or the pleading constraints that
18 Delaware may put on that, is a matter of Delaware law and
19 procedural law that I am not obligated to imply.

20 MR. HALSTON: I think Your Honor has his own
21 discretion with granting leave to amend, Your Honor. I
22 think that is right.

23 THE COURT: So my view is that I will permit them
24 30 days for their final complaint, but it will come to a
25 conclusion at that point.

1 MR. HALSTON: May I -- would Your Honor like to
2 hear anything on collateral estoppel and why that might
3 short-circuit any leave to amend here?

4 THE COURT: This is their opportunity to have
5 their best shot. They actually had -- this will be their
6 third.

7 MR. HALSTON: This will be their third.

8 THE COURT: So there won't be any question whether
9 or not there is any adequate opportunity.

10 MR. JONCKHEER: Thank you, Your Honor.

11 THE COURT: Okay. So we will give you 30 days. I
12 will deny the motion to dismiss as moot in light of that
13 there is going to be a further complaint filed.

14 MR. HALSTON: Would Your Honor like to schedule a
15 briefing schedule on that?

16 THE COURT: I think I want to hear about the view
17 of the plaintiff's securities case first.

18 MR. JONCKHEER: Thank you, Your Honor.

19 THE COURT: Are you ready to go forward on
20 plaintiff's claim.

21 MR. CERA: Your Honor, Solomon Cera for the lead
22 plaintiff.

23 Your Honor, of course the complaint -- a complaint
24 can always be improved upon. We are dealing with a very --

25 THE COURT: I am telling you, I don't know how

1 clear I have to be about this. The question is:

2 Is this the one that you want to rise or fall on?

3 You have seen the objections that have been raised
4 by the defendants here, and they are really questions of
5 specificity.

6 Now, are you prepared to go forward on this
7 complaint or not?

8 MR. CERA: Your Honor, if the Court deems it
9 insufficient --

10 THE COURT: This is not my -- the question is are
11 you prepared to go forward or not?

12 MR. CERA: We have more to add, Your Honor.

13 THE COURT: Well, no doubt you do. Is that what
14 you want to do, because that will be the last time you got
15 to do it.

16 MR. CERA: Well, how -- I'm interpreting the
17 Court's comments this way, Your Honor. You are saying if I
18 chose to go forward today and make an argument and attempt
19 to convince the Court that this complaint is sufficient
20 under the applicable law and Your Honor disagreed, the case
21 would be terminated.

22 THE COURT: Yes.

23 MR. CERA: Well, then we want to file another
24 complaint, Your Honor.

25 THE COURT: All right. 30 days?